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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,617	02/02/2004	Wolfgang Eis	AMB-131-02	2301
24131 7590 10/15/2007 LERNER GREENBERG STEMER LLP P O BOX 2480 HOLLYWOOD, FL 33022-2480			EXAMINER HOFFMANN, JOHN M	
			ART UNIT 1791	PAPER NUMBER
			MAIL DATE 10/15/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Notification of Non-Compliant Appeal Brief  
(37 CFR 41.37)**

Application No.

10/770,617

Applicant(s)

EIS ET AL.

Examiner

John Hoffmann

Art Unit

1791

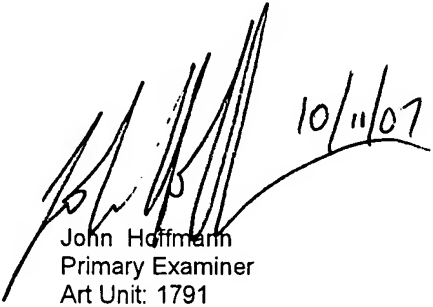
--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 06 September 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

[REDACTED]

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☒ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☒ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

  
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Continuation of 10. Other (including any explanation in support of the above items): As to 3): At least the new drawing filed on 9/21/07 is an amendment after final. It is not entered. As to 6)(for example) there is no separate heading for 4th Ground of rejection (see page 9 of applicant's brief for the 4th ground). 37 CFR 41.37 describes the required use of headings and subheadings. It appears that applicant is using subheadings as headings which makes the Brief difficult to comprehend. As to 8) the dictionary definition and where it was entered by examiner needs to be included in the brief. As to the unsupported assertion that a dictionary definition is not evidence: applicant gives no caselaw to support that assertion and the arguments are not persuasive. For example, the dictionary could have been written after applicant's invention and thus is moot as to what was meant at the time of the invention. Also "Webster's" is not a proprietary term. Anyone could create their own "Webster's Third New International Dictionary" and add any definition. Moreover, most dictionaries have more than one definition for a word - the other definitions should be available so as to see if any definition supports the Office's rejections. Appellant must let the Office have access to the basis for the purported definition if Appellant wants the Office to consider the definition. No new time period is started; the time period of 8/6/2007 remains in effect.

**Advisory Action**  
**After the Filing of an Appeal Brief**

Application No.

10/770,617

Applicant(s)

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Examiner

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Art Unit

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The reply filed 21 September 2007 is acknowledged.

1. ☒ The reply filed on or after the date of filing of an appeal brief, but prior to a final decision by the Board of Patent Appeals and Interferences, will not be entered because:

a. ☒ The amendment is not limited to canceling claims (where the cancellation does not affect the scope of any other pending claims) or rewriting dependent claims into independent form (no limitation of a dependent claim can be excluded in rewriting that claim). See 37 CFR 41.33(b) and (c).

b. ☐ The affidavit or other evidence is not timely filed before the filing of an appeal brief.  
See 37 CFR 41.33(d)(2).

2. ☐ The reply is not entered because it was not filed within the two month time period set forth in 37 CFR 41.39(b), 41.50(a)(2), or 41.50(b) (whichever is appropriate). Extensions of time under 37 CFR 1.136(a) are not available.

Note: This paragraph is for a reply filed in response to one of the following: (a) an examiner's answer that includes a new ground of rejection (37 CFR 41.39(a)(2)); (b) a supplemental examiner's answer written in response to a remand by the Board of Patent Appeals and Interferences for further consideration of rejection (37 CFR 41.50(a)(2)); or (c) a Board of Patent Appeals and Interferences decision that includes a new ground of rejection (37 CFR 41.50(b)).

3. ☐ The reply is entered. An explanation of the status of the claims after entry is below or attached.

4. ☒ Other: The new drawings are not limited to canceling claims or rewriting claims into independent form. They raise the new issue as to whether they contain new matter.

  
JOHN HOFFMANN  
PRIMARY EXAMINER  
GROUP 1300